

Serial No. 09/929,673

Docket No.: KCC-15,762

**REMARKS**

Applicant's undersigned attorney thanks the Examiner for her comments. Applicant respectfully requests reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1-31 are pending.

**Amendments to the Claims**

Claims 1-31 have been examined with no claims being allowed. Applicant has amended independent Claims 1, 11, and 23 to include the limitation of the recited swimwear garment being "disposable." Support for this amendment is provided at page 8, lines 18-20, for example.

No new matter has been added by this Amendment. No additional fee is due for this Amendment because the number of independent claims remains unchanged and the total number of claims also remains unchanged.

**Claim Rejections - 35 U.S.C. §102 or 35 U.S.C. §103**

The rejection of Claims 1-31 under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Sun et al. (U.S. Patent No. 5,882,357) is respectfully traversed.

Sun et al. disclose "durable" and regenerable microbiocidal textiles having a heterocyclic N-halamine covalently attached to a cellulose-based material or other polymeric material.

For a reference to anticipate a claim under 35 U.S.C. §102(b), the reference must disclose each and every element or limitation of the claim. Sun et al. do not disclose each and every element or limitation of amended Claims 1, 11, and 23. More particularly, Sun et al. fail to disclose (a) any sort of swimwear garment having an antimicrobial agent applied to it, (b) any sort of absorbent assembly in combination with an antimicrobial agent, or (c) any disposable garments treated with an antimicrobial agent. Thus, Sun et al. fail to anticipate any of Applicant's claims.

To establish a prima facie case of obviousness under 35 U.S.C. §103(a), the prior art reference must teach *or suggest* all the claim limitations.

KCC-2082

7

MR/S

Serial No. 09/929,673

Docket No.: KCC-15,762

Additionally, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference.

Sun et al. fail to disclose *or suggest* disposable swimwear garments that include an absorbent assembly and are treated with an antimicrobial agent. Furthermore, Sun et al. *teach away* from using an antimicrobial agent in combination with any type of disposable garments, or any type of swimwear garments. More particularly, Sun et al. is directed to “durable” and “regenerable” microbiocidal textiles (Col. 2, lines 41-42). Durable textiles are intended for recurrent use, whereas disposable garments, particularly disposable garments that include an absorbent assembly, are typically disposed after one use.

As pointed out by the Examiner in the previous Office Action, the regenerable and reusable biocidal materials of Sun et al. “can replace currently used disposable, nonwoven fabrics” (Col. 3, lines 29-31). Thus, the textiles of Sun et al. are not intended for use in disposable products, but instead are designed to be used *instead of* disposable products. In fact, Sun et al. recite the *replacement of* disposable products with the durable microbial textiles of the invention as one of the primary features of the invention, thereby teaching away from disposable products.

The antimicrobial agent present in the disposable, absorbent, swimwear garments of Applicant’s invention is stabilized by a pool water ingredient, such as bromine or chlorine. After a single use during which a wearer has worn the swimwear garment into a pool environment, the disposable garment is typically discarded. Sun et al. not only disclose durable textiles, but further recommend that the textiles undergo periodic washings to regenerate the microbiocidal activity of the textiles, thereby reinforcing the notion that the textiles and textile applications in Sun et al. are *not disposable*.

Sun et al. acknowledge that the halogenated derivatives of the heterocyclic N-halamines are major disinfectants for use in swimming pools, but instead of disclosing or suggesting that the textiles be used in a swimming pool, Sun et al. instead interpret the use of the halogenated derivatives in swimming pools as evidence that these compounds will not generate any toxic effects for humans or for

KCC-2082

8

MR/S

Serial No. 09/929,673

Docket No.: KCC-15,762

the environment (Col. 4, lines 58-64). More particularly, Sun et al. acknowledge the presence of the halogenated derivatives in a swimming pool environment, yet fail to incorporate, or even suggest incorporating, any aspect of the swimming pool environment (including clothing worn in the swimming pool environment) into the invention of Sun et al. Thus, by mentioning swimming pools and not making any suggestion of using the textiles in combination with swimming pools, Sun et al. teach away from using the microbial textiles in swimwear applications.

Not only do Sun et al. fail to disclose or suggest all the claim limitations recited in Applicant's amended independent claims, Sun et al. provide no suggestion or motivation to modify the teachings of Sun et al. to achieve disposable garments, or swimwear garments, or disposable swimwear garments, in combination with an antimicrobial agent. Furthermore, as explained above, Sun et al. teach away from applying antimicrobial agents to any sort of disposable garments, or any swimwear garments.

In order to establish obviousness, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Applicant's disclosure. Absent impermissible hindsight, Sun et al. provide no teaching or suggestion to incorporate an antimicrobial agent into a disposable swimwear garment.

For at least the reasons presented above, Applicant respectfully submits that Claims 1, 11, and 23 are not anticipated by Sun et al. Because Claims 2-10 depend from Claim 1, Claims 12-22 depend from Claim 11, and Claims 24-31 depend from Claim 23, respectively, these claims are also not anticipated by Sun et al. Furthermore, the teachings of Sun et al. fail to disclose or suggest Applicant's claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Serial No. 09/929,673

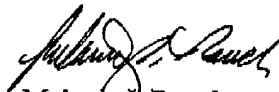
Docket No.: KCC-15,762

**Conclusion**

Applicant intends to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicant has not addressed in this response, Applicant's undersigned attorney requests a telephone interview with the Examiner.

Applicant sincerely believes that this Patent Application is now in condition for allowance and, thus, respectfully requests early allowance.

Respectfully submitted,



Melanie Y. Rauch  
Registration No. 40,924

Pauley Petersen & Erickson  
2800 West Higgins Road, Suite 365  
Hoffman Estates, Illinois 60195  
(847) 490-1400  
FAX (847) 490-1403